

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT J. SIMMONS, II,

Plaintiff,

**1:10-cv-1386
(GLS/RFT)**

v.

GEORGE BARNA and ELGIN MANAGEMENT,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Robert J. Simmons, II
Pro Se
35 South Main Street
P.O. Box 414
Castleton, NY 12033

FOR THE DEFENDANTS:

NO APPEARANCE

**Gary L. Sharpe
District Court Judge**

MEMORANDUM-DECISION AND ORDER

Robert J. Simmons, II brings this action under 42 U.S.C. § 1983 alleging violations of his constitutional rights. (See Compl., Dkt. No. 1.) In a Report Recommendation and Order (R&R) filed December 21, 2010,

Magistrate Judge Randolph F. Treece, after granting Simmons in forma pauperis status, recommended dismissal of Simmons's complaint under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim on which relief may be granted.¹ (See Dkt. No. 4.) Pending are Simmons's objections to the R&R. (Dkt. No. 6.) For the reasons that follow, the R&R is adopted and Simmons's complaint is dismissed.

Before entering final judgment, this court routinely reviews all report and recommendation orders in cases it has referred to a magistrate judge. If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations de novo. See *Almonte v. N.Y. State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at *6-7 (N.D.N.Y. Jan. 18, 2006). In those cases where no party has filed an objection, or only a vague or general objection has been filed, this court reviews the findings and recommendations of a magistrate judge for clear error. See *id.*

Judge Treece recommended that the claims asserted by Simmons are subject to dismissal due to (1) the lack of any allegation that the named

¹The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

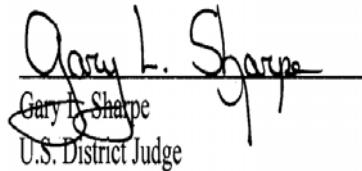
defendants—Simmons's landlords—acted under color of state law; and (2) the failure to specify what civil right he is seeking to vindicate and how it was actually violated. (See R&R at 2-3, Dkt. No. 4.) In response, Simmons offers no specific objections to Judge Treece's findings. Instead, with some further elaboration, Simmons reasserts the same allegations contained in his complaint. (See generally Pl. Objections, Dkt. No. 6.) Therefore, upon review of the R&R for clear error, the court finds none and adopts Judge Treece's recommendations.

WHEREFORE, for the foregoing reasons, it is hereby
ORDERED that Magistrate Judge Treece's Report Recommendation and Order (Dkt. No. 4) is **ADOPTED** and Simmons's complaint is **DISMISSED**; and it is further

ORDERED that the Clerk close this case and provide copies of this Memorandum-Decision and Order to the parties by regular and certified mail.

IT IS SO ORDERED.

May 6, 2011
Albany, New York


Gary L. Sharpe
U.S. District Judge